



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DRW 05-03

Paper No. 9

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

COPY MAILED

MAY 06 2003

OFFICE OF PETITIONS

In re Application of :
Stedman, Gervais, Mills, Miller, :
and Brim : DECISION REFUSING STATUS
Application No. 10/032,988 : UNDER 37 CFR 1.47(a)
Filed: 27 December, 2001 :
Attorney Docket No. WDIC117389 :

This is in response to the petition filed under 37 CFR 1.47(a) on
13 January, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of
this decision to reply, correcting the below-noted deficiencies.
Any reply should be entitled "Request for Reconsideration of
Petition Under 37 CFR 1.47(a)," and should only address the
deficiencies noted below, except that the reply may include an
oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR
1.136(a).

The above-identified reissue application was filed on 27
December, 2001 with a reissue declaration executed by the
assignee. On 7 August, 2002, a non-final Office action was
mailed requiring, *inter alia*, a declaration identifying the
inventors. In response, on 13 January, 2003 (certificate of
mailing date 7 January, 2003) a two month extension of time was
filed, accompanied by the present petition, petition fee, and a

declaration naming Steven Matthew Stedman, Glenn Edward Gervais, Kevin McFarland Mills, Michael William Miller, and David Neal Brim as joint inventors and signed by all inventors except joint inventor Stedman on behalf of themselves and joint inventor Stedman.

Petitioners assert that joint inventor Stedman has refused to sign the reissue declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2).

In regards to item (1), petitioners have not submitted sufficient evidence to prove that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor. Although petitioners state that Stedman expressly refused to sign the declaration, the petition does not state that a copy of the application was ever sent or given to him. Petitioners must show proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) were sent or given to the non-signing inventor for review.¹ Petitioners should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Petitioners must also present proof that the non-signing inventor refuses to sign the declaration *after* being sent or given a copy of the application papers. If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that

¹MPEP 409.03(d).

person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (2), The declaration supplied with the application papers lacks the citizenship of joint inventor Mills.² A statement of the inventor's citizenship is a statutory requirement and cannot be waived.³ Petitioners must submit a new oath or declaration in compliance with 37 CFR 1.63, 1.67, and 1.175 signed by joint inventor Mills.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



Douglas I. Wood
Petitions Attorney
Office of Petitions

²MPEP 605.01.

³35 U.S.C. § 115, MPEP 605.01.